In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-63

WALTER ROBERT DICKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted of causing a forged security to be transported in interstate commerce, in violation of 18 U.S.C. 2314. He was sentenced to five years' imprisonment.[1] The court of appeals affirmed *per cu-*

[1] It appears that petitioner was first tried on this charge in August 1971. He was convicted and sentenced to two years' imprisonment and a fine of $2,500. Thereafter, he successfully moved in arrest of judgment on the ground that the indictment

riam (Pet. App. A).

The evidence showed that sometime before January 1970 the used car manager of an automobile dealership had placed several automobiles for sale on a consignment basis with Bob's Used Cars, operated by petitioner (Tr. 9-15). In February 1970, the company discovered that a 1969 Ford was missing and reported it to the police (Tr. 6).

In October or November 1969, petitioner hired John Bellville to obtain an Ohio motor vehicle title for the missing 1969 Ford (Tr. 42-43). Petitioner provided Mr. Bellville with an Ohio application for a motor vehicle title (G. Ex. 6), a fictitious Statement of Source of Title which included the sworn statement that Falls Church Ford, Inc., had assigned the title of the 1969 Ford to Mark Collins for value

---

was defective (Pet. 4-5). Upon retrial, petitioner received the more severe sentence of five years' imprisonment (Pet. 5-6). It is not clear from an inspection of the file in this case whether the imposition of the more severe sentence following the second trial was based upon valid reasons expressed by the district court at the time of sentencing (no transcript of the sentencing hearing was ordered in connection with the appeal), and there is absolutely nothing in the record to suggest that the more severe sentence was in any way improperly motivated (in fact, different judges presided at the two trials). While we do not concede that the principle underlying *North Carolina* v. *Pearce*, 395 U.S. 711, is automatically applicable under the facts of this case, we recognize the possibility, not explored on the appeal or raised in the petition, that the sentence may have been improper. Such a possibility need not concern this Court, however, since it would be most properly dealt with by means of a motion for correction of sentence filed with the district court pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

received (G. Ex. 9), and a Power of Attorney authorizing Bellville to act for Collins (G. Ex. 7) (Tr. 37-39, 44-46). After returning to Virginia, Bellville gave petitioner the Ohio motor vehicle title (G. Ex. 8) which he had obtained (Tr. 47).

Petitioner claims that the Statement of Source of Title (G. Ex. 9) "is merely evidence as to the existence of an automobile title" (Pet. 7) and therefore is not a security as defined by 18 U.S.C. 2311. Petitioner overlooks the fact that the bottom half of this document is an assignment of title (Pet. App. B). It is thus covered by the definition of "securities" in 18 U.S.C. 2311, which includes any "instrument or document or writing * * * transferring or assigning any right, title, or interest in or to goods, wares, and merchandise." The Clerk of the Common Pleas Court in Lake County, Ohio, whose deputy clerk issued the Ohio motor vehicle title to Mr. Bellville, testified at trial that the document referred to as a Virginia "Statement of Source of Title" was required, not merely to show the existence of the automobile title, but to show an assignment of title (Tr. 38-39).

Petitioner's second claim, made here for the first time, is that the government was required to prove that the petitioner personally transported the forged security in interstate commerce. However, the evidence which showed that petitioner caused the security to be transported in interstate commerce is sufficient to establish his guilt as a principal under 18 U.S.C. 2(b). The Reviser's Note to Section 2314 specifies that "[r]eference to persons causing or pro-

curing was omitted as unnecessary in view of defini-
tion of 'principal' in section 2 of this title."

It is therefore respectfully submitted that the peti-
tion for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 473838 83